



January 2, 2024

Filed via Email at EBSA.FiduciaryRuleExamination@dol.gov

The Honorable Lisa Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Retirement Security Rule (**RIN 1210-AC02**)

Dear Assistant Secretary Gomez:

The Committee on Investment of Employee Benefit Assets (CIEBA) writes to comment on the Department of Labor's (DOL's) proposed rule (the Proposed Rule) to revise the definition of "investment advice" under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

CIEBA is generally supportive of the portions of the Proposed Rule that would ensure those making rollover recommendations are held to a fiduciary standard of care. However, we urge DOL to modify the Proposed Rule so it is less disruptive in the institutional context.

1. Background on CIEBA – CIEBA represents many of the nation's most experienced investment fiduciaries. CIEBA members are the chief investment officers of more than 100 Fortune 500 companies who individually manage and administer ERISA-governed corporate retirement plan assets. CIEBA member organizations voluntarily sponsor plans and manage over \$2 trillion of retirement assets on behalf of more than 15 million participants, representing a very significant portion of the largest private defined benefit and defined contribution pension plans in the US.

As the largest organization of corporate pension investment officers, CIEBA represents the interests of employee benefit plan sponsors before legislators, Congress, regulators, and the media. Since 1985, CIEBA has provided a nationally recognized forum and voice for corporate pension plan sponsors on investment and fiduciary issues.

Because CIEBA members are voluntary sponsors of this country's largest defined benefit and defined contribution plans, we have a strong commitment to the long-term health and viability of

the retirement system. As plan fiduciaries and investment professionals responsible for the investment menus for the retirement savings of millions of 401(k) plan participants, we are committed to helping plan participants prepare for retirement.

The transition from a defined benefit plan system to a defined contribution plan system has in many ways shifted most retirement planning responsibilities from plan sponsors to participants. Participants in defined contribution plans now decide how much to contribute, how to invest those contributions, and what to do with their retirement assets when they retire or change jobs. As the DOL rightly points out in materials accompanying the Proposed Rule, poor participant decisions can significantly reduce their retirement assets while good decisions can significantly improve their retirement outcomes.

CIEBA believes that 401(k) plans are an increasingly important source of retirement income but investing is a highly complex subject, which may be beyond the scope of the average 401(k) participant. As a result, the average 401(k) participant needs safeguards from conflicted advice. Anyone advising participants about their 401(k) assets, particularly in the rollover context, should be held to the same fiduciary standards as plan investment fiduciaries.

2. Rollover guidance has become increasingly critical for participants and should be considered fiduciary advice. It is our longstanding view that the existing definition of “investment advice” fails to capture much of the advice being provided in the IRA rollover context. When workers and retirees seek assistance in deciding what to do with their account balances upon separation from service, they often rely on an adviser who they think is working in their best interest but is, in reality, merely selling products. CIEBA believes that participants deserve thorough, prudent, and unbiased advice from all providers involved in the management of their assets and that those providing advice should be held to the same high fiduciary standard. Consequently, the Proposed Rule’s inclusion of rollover recommendations as fiduciary advice is a positive and overdue development, and we commend the DOL for taking this approach.

3. CIEBA has concerns over disruptions for established institutional investment fiduciaries. While there are very favorable aspects of the Proposed Rule, we do have concerns that the Proposed Rule is unnecessarily disruptive in the institutional investor context. Under the Proposed Rule, a significant amount of investment sales communications to large-plan, institutional investors will likely be deemed fiduciary advice and, therefore, potentially add cost and complexity to these common interactions.

Although the Proposed Rule contains intermediary and “hire me” exceptions, those exceptions are not available when recommendations involve individualized discussions about products and services. The challenge is that sales communications are very often individualized because the sponsor is seeking to understand the pricing and terms of bespoke services. For example, a fiduciary may issue a request-for-proposal seeking bids from insurers on annuities, and the insurer will craft a proposal based on the specific demographics of the plan. We see no reason

why these interactions should be fiduciary advice and request DOL include a specific exception to the rule.

4. CIEBA has concerns over the limited time for the public to comment on this important Proposed Rule. Finally, as fiduciaries, our members understand the importance of a prudent process; so, we are concerned about the accelerated public comment period and hearing scheduling. We understand DOL's desire to move the project forward, but we see no good reason to limit public engagement on an issue as important as the Proposed Rule. In this case, re-proposal is warranted so that the regulated community has another opportunity to analyze and comment on this important proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Simmons", with a long horizontal flourish extending to the right.

Dennis Simmons

Executive Director